

Testimony of  
Quinnipiac University School of Law Civil Justice Clinic

**In Support of Raised Bill 914**

Labor and Public Employees Committee  
March 5, 2015

Good afternoon distinguished Committee Members. My name is Adam Tusia. My colleague, James Dick, and I are residents of Hamden, Connecticut, and we are also students in the Law School's Civil Justice Clinic, which provides free legal services to low-income people. Many of our clients are low-wage workers whose employers refused to pay them minimum or overtime wages in violation of the law. We currently represent two restaurant-workers whose employers failed to pay them minimum and overtime wages totaling more than \$70,000. When one of our clients approached the employer to ask about his employment rights, the employer told our client he had no rights and that he should get back to work.

Wage theft is a major problem throughout the United States, including here in Connecticut.<sup>1</sup> We care about the law's protection of vulnerable workers who are being taken advantage of by unscrupulous employers. We also care about ethical employers who are putting themselves at a competitive disadvantage by following the law. Raised Bill 914 is good for workers and business. By requiring liquidated damages in wage theft cases, subject to a good faith defense, Raised Bill 914 strengthens legal protections for vulnerable workers and levels the playing field for employers. We support Raised Bill 914 and urge this Committee to approve it.<sup>2</sup>

**I. CONNECTICUT LAW IS INCONSISTENT WITH FEDERAL LAW, WHICH  
REQUIRES LIQUIDATED DAMAGES ABSENT A FINDING OF GOOD FAITH.**

The Fair Labor Standards Act (FLSA) requires employers to pay wages that are at or above the state minimum wage rate,<sup>3</sup> and requires them to pay one and one-half times the regular rate of pay for work performed in excess of 40 hours a week.<sup>4</sup> When an employer fails to comply with these minimum wage and overtime provisions, the FLSA provides a civil right of action for damages.<sup>5</sup> Significantly, employers found in violation of FLSA are also liable for "liquidated damages," which is an extra amount equal to the unpaid wages that compensates the

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<sup>1</sup> See, e.g., UNIDAD LATINA EN ACCION & NEW HAVEN WORKERS ASSOCIATION, THE CONNECTICUT WAGE THEFT CRISIS, STORIES AND SOLUTIONS (2015); Steven Greenhouse, *Study Finds Violations of Wage Law in New York and California*, NEW YORK TIMES (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/business/study-finds-violations-of-wage-law-in-new-york-and-california.html>.

<sup>2</sup> This testimony addresses only Raised Bill 914. The Clinic defers to the testimony of other groups, including New Haven Legal Assistance Association, Inc. and Connecticut Legal Services, in support of Raised Bill 1037, which would create a procedure for establishing a lien on an employer's property to secure a payment of unpaid wages owed to an employee.

<sup>3</sup> 29 U.S.C. § 206(a).

<sup>4</sup> 29 U.S.C. § 207(a)(1)

<sup>5</sup> 29 U.S.C. § 216(b).

employee for retention of his or her wages.<sup>6</sup> Liquidated damages are the norm under FLSA; an employer who violates FLSA must pay liquidated damages unless the employer can show his “action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation [of FLSA].”<sup>7</sup>

The Connecticut Minimum Wage Act (CMWA), like FLSA, requires employers to pay employees a minimum wage<sup>8</sup> and overtime wages for work performed in excess of 40 hours a week.<sup>9</sup> The CMWA also provides a civil right of action for damages when an employer fails to comply with these provisions.<sup>10</sup> Unlike FLSA, however, CMWA liquidated damages are *not* automatically awarded absent a good faith defense. Rather, CMWA liquidated damages are granted only where employees prove “bad faith, arbitrariness or unreasonableness” by the employer in addition to the underlying offense.<sup>11</sup>

## II. CONNECTICUT COURTS HAVE NARROWLY CONSTRUED THE CMWA’S LIQUIDATED DAMAGES PROVISION.

Although some Connecticut courts have awarded liquidated damages under the CMWA based on a finding that the employer acted in bad faith,<sup>12</sup> others have construed “bad faith” narrowly to deny liquidated damages. For example, in *Maratea v. Taylor Freezer of Connecticut, Inc.*, the Connecticut Superior Court refused to award liquidated damages to the plaintiff, Ms. Ann Maratea, who worked fifty hours per week for ten years but was only paid for forty hours per week.<sup>13</sup> According to the court, “[a]lthough it was known to management personnel that Ann Maratea would arrive at [work] well before the official 8 a.m. start of the work day,” the employer’s failure to pay Ms. Maratea *anything* for ten hours of work per week for *an entire decade* was insufficient to demonstrate bad faith.<sup>14</sup> “Defendants . . . did not act in

<sup>6</sup> 29 U.S.C. § 216(b); see *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 (1945) (“[FLSA’s] liquidated damage provision is not penal in its nature but constitutes compensation for the retention of a workman’s pay which might result in damages too obscure and difficult of proof for estimate other than by liquidated damages.”).

<sup>7</sup> 29 U.S.C. § 216(b) (“Any employer who violates the provisions of section 206 or section 207 of this title *shall* be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.”) (emphasis added); *id.* § 260 (“[I]f the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA], the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title.”); see also *Barfield v. New York City Health & Hospitals Corp.*, 537 F.3d 132, 150 (2d Cir. 2008) (“[A] district court is generally required to award a plaintiff liquidated damages equal in amount to actual damages”); *Hart v. Rick’s Cabaret Int’l, Inc.*, 967 F. Supp. 2d 901, 938 (S.D.N.Y. 2013) (stating that employer’s burden to show good faith “is a difficult one, with double damages being the norm and single damages the exception.”).

<sup>8</sup> CONN. GEN. STAT. § 31-58

<sup>9</sup> *Id.* § 31-76c

<sup>10</sup> *Id.* §§ 31-68(a), 31-72.

<sup>11</sup> *Butler v. Hartford Technical Institute, Inc.*, 243 Conn. 454, 470-71 (1997).

<sup>12</sup> See, e.g., *Petronella ex rel. Maiorano v. Venture Partners, Ltd.*, 758 A.2d 869, 875-76 (Conn. App. Ct. 2000) (finding “ample evidence” to support trial court’s double damages award and stating that such award was “in keeping with the remedial purpose of the wage laws”).

<sup>13</sup> *Maratea v. Taylor Freezer of Connecticut, Inc.*, No. CV084010421S, 2010 WL 1544820, at \*1 (Conn. Super. Ct. Mar. 24, 2010).

<sup>14</sup> *Id.*

bad faith," the court held, because they "were unaware of their obligation to pay additional compensation to the Plaintiff, during the decade during which she was an employee of Taylor Freezer."<sup>15</sup> According to the court, the employer's supposed decade-long ignorance of the simple requirement that work must be compensated precluded an award of liquidated damages.

### III. RAISED BILL 914 WILL BENEFIT CONNECTICUT WORKERS AND EMPLOYERS.

Raised Bill 914 will benefit Connecticut workers and employers by requiring liquidated damages unless the employer establishes that the employer had a good faith belief that the underpayment of such wages was in compliance with the law.

#### A. Raised Bill 914 Discourages Predatory Behavior by Employers.

Under the CMWA, an unethical employer has little incentive to pay an employee his or her lawful wages. Instead, the employer may deliberately choose to underpay his or her workers, knowing that, if and when an employee files and wins a lawsuit under the CMWA (which is difficult to do), liquidated damages are not automatic. Assuming that the employee is unable to show bad faith or that the employer can rebut such a showing, the most an employer will have to pay the employee is an amount equal to what the employer should have paid the employee all along. Simply put, for unethical employers, wage theft makes good business sense and is worth the risk of litigation. This is especially true when the employer's workforce consists of low-wage workers, who are less likely to know their rights under minimum wage and overtime laws and—even if they do—are less likely to enforce those rights for fear of retaliation.<sup>16</sup>

Raised Bill 914 discourages this predatory behavior by establishing a more appropriate penalty for employers who commit wage violations. Under the terms of this bill, an employer who flouts the CMWA will have to pay the employee twice what the employer owed the employee. The bill's "good faith" defense, of course, will protect employers who try to comply with the law but make an honest mistake.

#### B. Raised Bill 914 Would Make the CMWA Consistent with Federal Law and Other State Laws.

Raised Bill 914 would make the CMWA consistent with federal law by requiring liquidated damages absent a good faith defense by the employer.<sup>17</sup> This is important because FLSA does not protect all employees; it protects only those engaged in "interstate commerce" and those whose employers make over \$500,000 per year.<sup>18</sup> Wage protection for many

<sup>15</sup> *Id.* at \*4.

<sup>16</sup> See ANNETTE BERNHARDT ET AL., BROKEN LAWS, UNPROTECTED WORKERS, VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES 33 (2009), <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

<sup>17</sup> 29 U.S.C. § 216(b).

<sup>18</sup> See U.S. DEPT OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #14: COVERAGE UNDER THE FAIR LABOR STANDARDS ACT (July 2009), <http://www.dol.gov/whd/regs/compliance/whdfs14.pdf> (stating that FLSA covers "[e]mployees who work for certain businesses or organizations (or 'enterprises') that 'have an annual dollar volume of sales or business done of at least \$500,000' and 'employees . . . [whose] work regularly involves them in

employees in Connecticut therefore begins and ends with the CMWA—FLSA simply does not apply. Raised Bill 914 would protect all workers in Connecticut by giving them the same protections under the CMWA that other workers currently enjoy under FLSA.

Raised Bill 914 would also be consistent with the laws of a number of states, including Maine,<sup>19</sup> Massachusetts,<sup>20</sup> Vermont,<sup>21</sup> Maryland,<sup>22</sup> and North Carolina<sup>23</sup>—all of which require liquidated damages. Significantly, Raised Bill 914, which requires liquidated damages equal to *twice* the amount of unpaid wages (i.e., double damages) absent a good faith defense, is more moderate than the laws of some states, which require liquidated damages equal to *three times* the amount of unpaid wages.<sup>24</sup>

### C. Raised Bill 914 Levels the Playing Field for Employers.

Employers who abide by the CMWA are at a competitive disadvantage with those who do not. Ethical employers have higher labor costs than their predatory competitors who increase profits by underpaying employees in violation of the CMWA.

Raised Bill 914 levels the playing field for employers by diminishing predatory employers' competitive advantage. Under Raised Bill 914, predatory employers must comply with the law or face mandatory liquidated damages when sued for violating the law.

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commerce between States ('interstate commerce.')."); see also Lauren K. Dasse, *Wage Theft in New York: The Wage Theft Prevention Act As A Counter to an Endemic Problem*, 16 CUNY L. REV. 97, 118 (2012) ("Many businesses produce less than \$500,000 in annual gross revenues and do not produce goods for interstate commerce and are not covered by FLSA. Thus, for many [state residents] who work in small businesses—such as restaurants, landscaping, and construction companies—[the applicable state remedy] is the only remedy available.").

<sup>19</sup> ME. REV. STAT. tit. 26, § 670 ("Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages under this subchapter, such judgment *shall* include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as liquidated damages . . .") (emphasis added).

<sup>20</sup> MASS. GEN. LAWS ANN. ch. 151 § 1B ("An employee so aggrieved who prevails in such an action *shall* be awarded treble damages, as liquidated damages, for lost overtime compensation . . .") (emphasis added).

<sup>21</sup> VT. STAT. ANN. tit. 21, § 495b ("Any employer who violates the provisions of subdivision 495(a)(8) of this title *shall* be liable to any affected employee in the amount of the underpaid wages and an equal amount as liquidated damages, in addition to any other remedies available under this section.") (emphasis added).

<sup>22</sup> MD. CODE ANN., LAB. & EMPL. § 3-427(d) ("If a court determines that an employee is entitled to recovery in an action under this section, the court *shall* award to the employee . . . an additional amount equal to the difference between the wage paid to the employee and the wage required under this subtitle as liquidated damages . . . . If an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the wage required under this subtitle, the court shall: (i) determine that liquidated damages should not be awarded; or (ii) award, as liquidated damages, any amount less than the amount specified in paragraph (1)(ii) of this subsection.") (emphasis added).

<sup>23</sup> N.C. GEN. STAT. ANN. § 95-25.22(a1) ("In addition to the amounts awarded pursuant to subsection (a) of this section, the court *shall* award liquidated damages in an amount equal to the amount found to be due as provided in subsection (a), provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (a) of this section.") (emphasis added).

<sup>24</sup> See, e.g., MASS. GEN. LAWS ANN. ch. 151 § 1B.

#### **IV. CONCLUSION**

In conclusion, Connecticut law should discourage predatory employment practices that take advantage of vulnerable workers and disadvantage law-abiding employers. Raised Bill 914 is good for workers and for business; it strengthens legal protections for vulnerable workers and levels the playing field for employers. We urge this Committee to approve Raised Bill 914, and we thank you for the opportunity to present this testimony.

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By: Adam Tusia, Law Student Intern  
James Dick, Law Student Intern  
Kevin Barry, Supervising Attorney  
Sarah Russell, Supervising Attorney